SUPREME COURT, U.S.
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No. 276

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1956

R. S. RAINWATER, SR., SLOAN RAINWATER, JR., WILLIAM RAINWATER, AS INDIVIDUALS AND AS PARTNERS, d/b/a R. S. RAINWATER & SONS ..... *Petitioners*

v.

UNITED STATES OF AMERICA ..... *Respondent*

and

CITIZENS NATIONAL BANK, WALNUT RIDGE, ARKANSAS ..... *Petitioner*

v.

UNITED STATES OF AMERICA ..... *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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R. S. RAINWATER, SR., SLOAN RAINWATER, JR., WILLIAM RAINWATER, AS INDIVIDUALS AND AS PARTNERS, d/b/a R. S. RAINWATER & SONS ..... *Petitioners*

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v.

UNITED STATES OF AMERICA ..... *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Petitioners, R. S. Rainwater, Sr., Sloan Rainwater, Jr., William Rainwater, as individuals and as partners d/b/a R. S. Rainwater & Sons, and Citizens National Bank, Walnut Ridge, Arkansas, pray that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Eighth Circuit entered in these cases on May 3, 1957.

OPINIONS BELOW

The opinion of the United State District Court for the Eastern District of Arkansas (R.14) was not reported officially. The opinion of the Court of Appeals is not yet reported officially, and is set forth in the appendix, *infra*, pp. 13 to 24.

JURISDICTION

The judgment of the Court of Appeals (App., p. 25) was entered on May 3, 1957. The petition for rehearing was denied on June 17, 1957, and on the same date the mandate was stayed for a period of 30 days to permit the filing of this petition (App., p. 27). The jurisdiction of this Court is invoked under 28 U.S.C.A., Section 1254 (1).

QUESTION PRESENTED

The complaint was brought under Section 231 of Title 31, U.S.C.A., the pertinent part of which reads:

> "Any person . . . who shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, . . ."

The notes which are alleged to be fraudulent are claimed to have been transmitted by the Petitioners to Commodity Credit Corporation. The capital stock of Commodity Credit Corporation is owned entirely by the United States.

The question presented is whether Commodity Credit Corporation is the Government of the United States or a department or officer thereof.

STATEMENT

The United States brought two separate actions under the False Claims Act, Section 3490-3492, and Section 5438 of the Revised Statutes, 31 U.S.C.A. 231-233 against R. S. Rainwater, Sr., et al., and the Citizens National Bank of Walnut Ridge, Arkansas, to recover an unspecified amount of money on account of alleged false claims filed by those parties with the Commondity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, in connection with the 1949 cotton loan program of Commodity Credit Corporation.

The complaints in both of the cases state that the Petitioners caused certain Cotton Producers notes to be transmitted to and paid by Commodity Credit Corporation when the notes were not eligible under the 1949 cotton loan program, but no loss or damage to Commodity Credit Corporation is specified (R.1-6).

The Petitioners in each action filed motions to dismiss, and on May 8, 1956, the United States District Court for the Eastern District of Arkansas sustained the motions. An appeal was then taken to the United States Court of Appeals for the Eighth Circuit which reversed, ruling that the presentation of alleged false claims to Commodity Credit Corporation was both as a matter of form and as a matter of substance a presentation of such claims against the government of the United States and a department (Department of Agriculture) thereof.

REASONS FOR GRANTING THE WRIT

1. The United States Court of Appeals for the Fourth Circuit in the case of *United States of America* v. *Howard A. McNinch*, 242 F(2) 359 on facts identical with those set forth in the complaint in the instant case reached a conclusion exactly opposite the holding of the Eighth

Circuit. Reference will be made later to the reasoning employed in that well considered opinion.

The Eighth Circuit predicated its opinion principally upon the decision in *United States ex rel Marcus* v. *Hess*, 317 U. S. 537, 87 L. Ed. 443. No corporation owned by the Government was involved in that case. There the false claims were made against and paid from funds of Public Works Administration, which was not a separate entity but actually a part of the Government of the United States. Obviously, therefore, the case came within the purview of R. S. 5438. A *corporation* which is an agency and instrumentality of the Government is not the Government or a department of it. This Honorable Court has never deviated from that position, and the lower courts, until the decision by the Eighth Circuit in the instant case, have adhered carefully to such mandate.

In the very early case of *The Bank of the United States* v. *The Planters' Bank of Georgia*, 9 Wheat. 904, 6 L. Ed. 244; this Court said:

> "The state does not, by becoming a corporator, identify itself with the corporation. The Planters' Bank of Georgia is not the state of Georgia, although the state holds an interest in it."

Certainly, The Planters' Bank of Georgia did not become the State of Georgia by virtue of ownership of its stock by the State, and most assuredly Commodity Credit Corporation did not become the United States by reason of its stock being owned by the Government. This Court in *United States of America* v. *James H. Strang*, 254 U. S. 492, 65 L. Ed. 368, held that the United States Shipping Board Emergency Fleet Corporation was a separate entity from the United States, notwithstanding the ownership by the Government of all of its capital stock. We quote:

> "Notwithstanding all its stock was owned by the United States, it (the United States Shipping Board Emergency Fleet Corporation) must be regarded as a separate entity."

Of direct significance is the case of *United States ex rel Skinner & Eddy Corporation* v. *J. R. McCarl*, 275 U. S. 1, 72 L. Ed. 121, wherein a petition for a writ of mandamus was brought to compel the Comptroller General to pass upon claims of Skinner & Eddy Corporation against the United States growing out of contracts the corporation had made with the United States Shipping Board Emergency Fleet Corporation. The Fleet Corporation was organized on April 16, 1917, as an instrumentality of the Government, and all of its stock was owned by the United States. In holding that audit and control of the financial transactions of the Fleet Corporation were committed to its own corporate officers, and not the Comptroller General, the Court said:

> "For the Fleet Corporation is an entity distinct from the United States and from any of its departments or boards. . . ."

Then, this Court in *Reconstruction Finance Corporation* v. *J. G. Menihan Corporation*, 312 U. S. 81, 85 L. Ed. 595, recognized the separate entity of the Reconstruction Finance Corporation from the United States, when, speaking through Mr. Chief Justice Hughes, it affirmed:

> "The Reconstruction Finance Corporation is a corporate agency of the government, which is its sole stockholder. (January 22, 1932) 47 Stat. at L. 5, chap. 8, 15 USCA Sec. 601. It is managed by a board of directors appointed by the President by and with the advice and consent of the Senate. The Corporation has wide powers and conducts financial operations on a vast scale. While it acts as a governmental agency in performing its functions (see *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S.

21, 32, 33, 84 L. ed. 11, 16, 17, 60 S. Ct. 15, 124 ALR 1263), still its transactions are akin to those of private enterprises and the mere fact that it is an agency of the government does not extend to it the immunity of the sovereign."

The latest pronouncement of the rule by a Court of Appeals was in *United States of America* v. *Howard A. McNinch, supra.* In that case the Court stated that a claim against a government corporation which acts as an agency of the government manifestly is not a claim against the Government of the United States or a department thereof as required by R. S. 5438 as a condition of liability at the time of the adoption of R. S. 3490. The Court further said:

> "The fact that the government corporations here involved were not in existence at the time of the enactment of R. S. 5438 would not be controlling if the language of the section were broad enough to encompass claims against such corporations; but, as we have seen, the language is not broad enough to cover such claims, however liberal an interpretation be placed upon it. And in this connection we are bound to give consideration to the fact that the language of R. S. 3490 was not amended to cover such claims when amendments were made in the language of R. S. 5438 to cover the making of fraudulent claims against government corporations. Not only is this true, but it is true also that, in subsequent legislation passed to protect government corporations against false and fraudulent claims, criminal penalties were specifically provided but no provision was made for civil penalties or forfeitures. See 18 USC 1010 and 1014. If it were the intent of Congress that presentation of false claims against such corporations be redressed by actions for civil penalties or forfeitures, it would have been easy enough to have so provided when the statutes were enacted providing the criminal penalties. Such action by Congress would certainly be more logical

and seemly than for the courts to give a forced interpretation to a statute passed three quarters of a century ago when government corporations had not been dreamed of."

> "'In such case, civil penalties would properly have been made recoverable by the corporation, not by the United States. The fact that the forfeiture under R. S. 3490 must be recovered in a suit by the United States, and not by the government corporation to which the false claim has been presented, is an additional argument that false claims against such corporations are not comprehended by the statute."

The Third Circuit in *Reconstruction Finance Corporation* v. *Foust Distilling Co.*, 204 F(2) 343, has announced:

> "It has been held that where a government corporation carries on a business, it is an entity separate from the United States."

The case of *Lindgren* v. *U. S. Shipping Board Merchant Fleet Corporation*, 55 F(2) 117, cer. den. 286 U. S. 542, 76 L. Ed. 1280, involved a complaint for wrongful death against the U. S. Shipping Board Merchant Fleet Corporation, the stock of which was owned by the United States, and the Court said:

> "Plaintiff contends, however, that this suit and the former suit are virtually against the same defendant because the United States owns the stock of the Fleet Corporation and the Fleet Corporation is an agency of the United States. This position cannot be sustained. The United States is a sovereign power representing in its corporate capacity the people of the country and immune from suit, except as it may give its consent thereto. The Fleet Corporation is a private corporation of the District of Columbia, created under the laws of the United States, with power to sue and be sued in the same manner as other corporations. *Sloan Shipyards Corp.* v. *U. S. Shipping Board Emergency Fleet*

Corporation, 258 U. S. 549, 568, 42 S. Ct. 386, 66 L. Ed. 762; *U. S. Shipping Board Merchant Fleet Corporation* v. *Harwood*, 281 U. S. 519, 526, 50 S. Ct. 372, 74 L. Ed. 1011. Although the United States owns its stock, it is a distinct entity just as other corporations are distinct from their stockholders. A suit against it is not a suit against the United States, and a suit against the United States is not a suit against it."

In the case of *United States* v. *Skinner & Eddy Corporation*, 28 F(2) 373, modified 35 F(2) 889, cer. dismissed, 281 U. S. 770, 74 L. Ed. 1176, the Ninth Circuit held:

> "When the government leaves its sovereignty and enters the sphere of commercialism, through its private corporate instrumentalities, it places itself within the rules of private parties."

In *Providence Engineering Corporation* v. *Downey Shipbuilding Corporation*, 3 F(2) 154, cer. den. 264 U. S. 586, 68 L. Ed. 264, the District Court for the Eastern District of New York, speaking upon the question of assignments of claims against the Fleet Corporation, said:

> "It is to be observed that assignments of claims against the United States are forbidden. These are claims against the Fleet Corporation, the status of which has been fully described in an opinion written in the action at bar by the Circuit Court of Appeals for this Circuit. 294 F. 641. That corporation is quite a different entity from the United States."

Judge Patterson, United States District Judge for the Southern District of New York, in *United States* v. *Salant & Salant, Inc.*, 41 F. S. 196, a case which has been cited many times, said:

> "A corporation which is an agency of the government is not the government or a department or officer of it."

The United States District Court for the Southern District of Florida in *United States* v. *Brown*, 41 F. S. 838, cited *United States* v. *Strang, supra*, in holding:

> "When a corporation is created for commercial as distinguished from Governmental purposes, it is ordinarily implied in the absence of statutory provisions to the contrary, that such corporation shall have all the requisites and responsibilities of corporate existence, even though the United States owns all the stock. Such a corporation is an entity separate from the United States. *United States* v. *Strang*, 254 U. S. 491, 41 S. Ct. 165, 65 L. Ed. 368."

This Court since 1824 (*The Bank of the United States* v. *The Planters' Bank of Georgia, supra*) has consistently held that ownership by the Government of all of the capital stock of a corporation does not destroy the entity of the corporation; does not endow the corporation with the sovereignty of its owner; and does not merge the Government into the corporation or the corporation into the Government. The Courts of Appeals and the District Courts have observed this rule. A claim against the corporation would be audited and controlled by the officials of the corporation and not by the Comptroller General. If suit were brought upon the claim the suit would be against the corporation and not the United States as owner of all of the corporation stock. A claim presented to the corporation certainly is not a claim against the United States.

We call attention to the ruling of the Attorney General of the United States as announced in Opinion No. 19, 40 *Opinions Attorney General*, 84, 86 (1941). There the question was whether the rule laid down in the McCarl case, *supra*, that the Fleet Corporation was not accountable to the General Accounting Office was applicable to other

wholly owned government corporations, and the Attorney General expressed the view that the principles announced in that case were applicable to any corporation owned and operated by the Government, unless the purpose to provide otherwise appeared, either expressly or by implication.

The Departments of Government are listed in Title 5, U. S. C. A., Section 1, to which has been added by amendment the Department of Health, Education and Welfare (1953 Reorganization Plan No. 1, 18 F. R. 2053, 67 Stat. 631). Commodity Credit Corporation, of course, is not included in such enumeration.

2. Title 31, U. S. C. A., Section 231, is a "penal statute" and must be construed strictly. The Court of Appeals for the Second Circuit in *United States ex rel Brensilber* v. *Bausch & Lomb Optical Co.*, 131 F(2) 545, aff. 321 U. S. 711, 88 L. Ed. 417, in a *per curiam* opinion stated:

> ". . . it is not only penal, but drastically penal. *United States* v. *Bittinger*, 24 Fed. Cas. No. 14, 599, p. 1150; *United States* v. *Kansas Pacific Ry. Co.*, 26 Fed. Cas. No. 15, 506, p. 680; *United States* v. *Russell*, D. C., 19 F. 591. For this reason it has been strictly construed."

The same conclusion was reached by the Fifth Circuit in the case of *United States ex rel Ostrager* v. *New Orleans Chapter, Associated General Contractors of America*, 127 F(2) 649. In holding in the case of *United States* v. *National Wholesalers*, 126 F. S. 357, that the plaintiff could not recover under the false claims statute when the defendant supplied to plaintiff regulators equal to the brand specified in the contract between the parties, the Court said:

> "... the False Claims statutes, being 'drastically penal', must be 'strictly construed', *United States ex rel Brensilber* v. *Bausch & Lomb Optical Co.*, 2 Cir. 1942, 131 F(2) 545, 547, affirmed 1943, 320 U. S. 711, 64 S. Ct. 187, 88 L. Ed. 417."

The same language was employed by the Court in *Cahill* v. *Curtiss-Wright Corporation*, 57 F. S. 614. We quote:

> "It has been held that the statute being drastically penal should be strictly construed. . . ."

We earnestly insist that Commodity Credit Corporation is not the Government of the United States or a Governmental Department within the intention of Title 31 U. S. C. A., Section 231; that such Section should be construed strictly; and that the District Court was correct in dismissing the complaints herein.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari should be granted.

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APPENDIX

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 15,659

United States of America,
Appellant,
vs.
R. S. Rainwater, Sr., Sloan Rainwater, Jr., William Rainwater, as individuals and as partners, d/b/a R. S. Rainwater & Sons,
Appellees.

Appeal from the United States District Court for the Eastern District of Arkansas.

No. 15,660

United States of America,
Appellant,
vs.
Citizens National Bank, Walnut Ridge, Arkansas,
Appellee.

Appeal from the United States District Court for the Eastern District of Arkansas.

[May 3, 1957.]

Marcus A. Rowden, Attorney, Department of Justice (George Cochran Doub, Assistant Attorney General Osro Cobb, United States Attorney, and Samuel D. Slade, Attorney, Department of Justice, were with him on the brief), for Appellant.

Catlett & Henderson filed brief for Appellees.

Before WOODROUGH, VOGEL and VAN OOSTERHOUT, Circuit Judges.

VOGEL, Circuit Judge.

The United States brought two separate actions under the Federal False Claims Act, §§ 3490-3492 and § 5438 of the Revised Statutes, 31 U.S.C.A. §§ 231-233. Both actions were based on alleged false representations made to the Commodity Credit Corporation for the purpose of obtaining loans on cotton. The cases were consolidated and will be treated jointly. Subsequent to the consolidation the defendants made motions to dismiss on two grounds: 1, Lack of jurisdiction of the subject matter; 2, failure to state a claim upon which relief could be granted. Without writing an opinion setting forth its reasons, the District Court granted dismissal and the government brings these appeals.

The briefs and arguments of counsel are confined to two propositions: One, do false claims submitted to wholly owned government corporations, such as Commodity Credit Corporation, come within the purview of the False Claims Act as claims "against the Government of the United States, or any department or officer thereof"? Two, do the complaints state facts upon which relief may be granted where there has been no specific allegation of damage?

The second question requires no prolonged discussion. The complaints, after setting forth in detail the manner in which the defendants procured the "payment and allowance of false and fraudulent claims", (loans on cotton) pray for judgment "for the amounts provided for in 31 U.S.C. 231". 31 U.S.C.A. § 231, being the False Claims Act under which the actions were commenced, provides

that the persons doing any of the prohibited acts "shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages" Accordingly, it cannot be said, as claimed by the defendants, that there was no allegation of damage. Certainly by inference, at least, the government asks that in addition to the sum of $2,000.00 it recover double the amount of its damages. Irrespective of that, we believe that even if no damages were shown at the time of trial the United States could still recover the statutorily fixed sum of $2,000.00 for each of the proscribed acts. *United States* v. *Rohleder*, 1946, 3 Cir., 157 F.2d 126, 129; *United States ex rel. Marcus* v. *Hess*, D.C. Pa., 1941, 41 F.Supp. 197, aff'd 317 U.S. 537. We hold that defendants' second point or contention is unsound.

It is with the first proposition that difficulty arises. The False Claims Act, § 3490 of the Revised Statutes, was passed in 1863:

> "Section 3490—Any person * * * who shall do or commit any of the acts prohibited by any of the provisions of section fifty-four hundred and thirty-eight, Title 'Crimes', shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit."

The foregoing § 3490 has never been amended, but R. S. 5438, the criminal section referred to therein, has been amended. Prior to the amendment of R. S. 5438 it, insofar as may be pertinent herein, was as follows:

> "Section 5438—Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in

> the civil, military, or naval service of the United States, *any claim upon or against the Government of the United States, or any department or officer thereof,* knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim * * * shall be imprisoned * * *." (Emphasis supplied.)

While § 5438 was subsequently amended to include "any corporation in which the United States of America is a stockholder", it is well established that subsequent alteration or repeal of a statute previously incorporated by reference in a second statute does not affect the incorporating statute. *United States ex rel. Kessler* v. *Mercur Corp.*, 2 Cir., 1938, 83 F.2d 178, 180:

> "While section 5438 was amended, repealed, and finally since the time when it was referred to in section 3490 superseded by a broader enactment (18 U.S.C.A. § 80), it stands, so far as section 3490 is concerned, as it was written when incorporated by reference. * * * It is well settled that where a statute incorporates another, and the one incorporated is thereafter amended or repealed, the scope of the incorporating statute remains intact and 'no subsequent legislation has ever been supposed to affect it.' *Kendall* v. *United States*, 12 Pet. 524, 625, 9 L.Ed. 1181; In re *Heath*, 144 U.S. 92, 93, 94, 12 S.Ct. 615, 36 L.Ed. 358."

Succinctly stated, then, our question is: Do false claims submitted to the Commodity Credit Corporation, a wholly

owned government corporation, come within the meaning of the Federal False Claims Act as being "upon or against the Government of the United States, or any department or officer thereof"?

In a very recent case, *United States* v. *McNinch, et al.*, decided February 28, 1957, ... F.2d ..., the Court of Appeals for the Fourth Circuit held that a claim against a government corporation which acts as an agency of the government is not a claim against the government of the United States or a department or officer thereof, "* * * as required by R. S. 5438 as a condition of liability at the time of the adoption of R. S. 3490". It held that the language of the statute was not broad enough to cover such claims. The court gave consideration to the fact that the language of R. S. 3490 was not amended when amendments were made in the language of R. S. 5438 (the criminal statute) to cover the making of false claims against corporations in which the government was a stockholder. It stated, at page 11:

> "If it were the intent of Congress that presentation of false claims against such corporations be redressed by actions for civil penalties or forfeitures, it would have been easy enough to have so provided when the statutes were enacted providing the criminal penalties. Such action by Congress would certainly be more logical and seemly than for the courts to give a forced interpretation to a statute passed three quarters of a century ago when government corporations had not been dreamed of."

We find ourselves in disagreement with the Fourth Circuit case and must decline to follow it. Until *United States* v. *McNinch*, no case had so held. (*United States ex rel. Salzman* v. *Salant & Salant, Inc.*, D.C.N.Y., 1938, 41 F.Supp. 196, cited by the appellees is not in point as it

involves the Red Cross, whose funds are in no sense the property of the United States.) In addition to the cases reversed by *McNinch*, the District Court for the Southern District of New York, in *United States* v. *Samuel Dunkel & Co., Inc.*, D.C.N.Y., 1945, 61 F.Supp. 697, 699, in dealing with alleged frauds in connection with the sale of dried eggs to the Federal Surplus Commodities Corporation, held:

> "The obvious purpose and intent of this statute (Section 231 of Title 31 U.S.C.A., R. S. § 3490 and 5438) was to reach any person who knowingly caused or assisted in causing the Government to pay claims which were grounded in fraud, without regard to whether the person had direct contractual relations with the Government, as well as those who receive money from the Government as the result of their fraud. There is not to be so strict a construction as urged by the defendants."

We rely mainly, however, upon *United States ex rel. Marcus* v. *Hess*, 1943, 317 U.S. 537 (cited in the *Samuel Dunkel* case). In doing so, we shall attempt to point out that the ultimate source of payment of the fraudulent claims was the federal treasury and when so viewed there can be no distinction between a government corporation or the government itself being defrauded. In *Marcus* v. *Hess*, supra, the Supreme Court was dealing with the same Acts with which we are here concerned. There the respondents had made claims with local governmental units rather than with the United States government, but a substantial portion of their pay came from the United States for work on PWA projects. The court stated, at page 542:

> "We think the conduct of these respondents comes well within the prohibition of the statute, which includes 'every person who * * * causes to be presented,

> for payment * * * any claim upon or against the Government of the United States * * * knowing such claim to be * * * fraudulent'. This can best be seen upon consideration of the exact nature of respondents' relation to the government. *The contracts found to have been induced by the respondents' frauds were made between them and local municipalities and school districts of Allegheny County, Pennsylvania. A large portion of the money paid the respondents under these contracts was federal in origin,* granted by the Federal Public Works Administrator, an official of the United States. 40 U.S.C. 401(a)." (Emphasis supplied.)

Here, *all* of the money paid defendants was "federal in origin". In fact, we do not believe it ever lost federal identity. In reversing the Circuit Court in *Marcus* v. *Hess*, the Supreme Court stated, at page 544:

> "Government money is as truly expended whether by checks drawn directly against the Treasury to the ultimate recipient or by grants in aid to states. While at the time of the passage of the original 1863 Act, federal aid to states consisted primarily of land grants, in subsequent years the state aid program has grown so that in 1941 approximately 10% of all federal money was distributed in this form. These funds are as much in need of protection from fraudulent claims as any other federal money and the statute does not make the extent of their safeguard dependent upon the bookkeeping devices used for their distribution. The Senatorial sponsor of this bill broadly asserted that its object was to provide protection against those who would 'cheat the United States'. The fraud here could not have been any more of an effort to cheat the United States if there had been no state intermediary."

The same is true here except instead of a "state intermediary" we have a wholly owned government corpora-

tion set up as a "bookkeeping device" for the handling of government money. After quoting portions of the statute, the Supreme Court continued:

> "These provisions, considered together, indicate a purpose to reach any person who knowingly assisted in causing the government to pay claims which were grounded in fraud, without regard to whether that person had direct contractual relations with the government."

The Commodity Credit Corporation is actually an instrumentality of the United States "within the Department of Agriculture". (15 U.S.C.A. § 714) Its entire original capital of $100,000,000.00 was supplied by the United States. 15 U.S.C.A. § 714e. The Secretary of the Treasury must make an annual appraisal of the net worth of Commodity Credit Corporation and if the net worth is less than $100,000,000.00 the treasury must restore the amount of capital impairment. 15 U.S.C.A. § 713a-1. If the appraisal indicates an excess, the treasury receives such excess. 15 U.S.C.A. § 713a-2. Commodity Credit Corporation is authorized to borrow up to $14,500,000,000.00 on the credit of the United States to carry out its statutory programs of making loans on agricultural commodities. 15 U.S.C.A. § 713a-4. It seems to us, then, that both as a matter of form and as a matter of substance the alleged false claims were claims against the government of the United States and a department (Department of Agriculture) thereof. The creation of the Commodity Credit Corporation for the handling of government loans on agricultural commodities was a "bookkeeping device" and that fact cannot cover up the substance of that with which we deal. The false claims here were against money appropriated by Congress from the treasury of the United States, to be used in carrying out a governmental purpose.

If that money were exhausted, Congress had arranged for Commodity Credit to borrow on the credit of the United States. As stated by the Supreme Court in *Marcus* v. *Hess*, supra, "these funds are as much in need of protection from fraudulent claims as any other federal money and the statute does not make the extent of their safeguard dependent upon the bookkeeping devices used for their distribution". If the object of the statute was to protect against those who would cheat the United States, then to our minds it is applicable to the instant situation.

In *Marcus* v. *Hess*, supra, the claims were against local municipalities and school districts, but such claims were to be paid from a joint bank account containing both federal and local funds. We believe that situation to be farther removed from the strict statutory language "upon or against the Government of the United States, or any department or officer thereof" than is the situation with which we here deal—a wholly owned governmental corporation set up as a bookkeeping expediency whose *entire* funds are appropriated by the United States, whose profits, if any, go into the treasury of the United States, whose losses are reimbursed from the treasury, and whose actions are binding upon the United States to the extent of many times its capital assets.

In addition to *Marcus* v. *Hess*, supra, we believe the Supreme Court's attitude toward wholly owned government corporations has been reflected in a number of other cases which indicate a tendency to disregard corporate form as a stratagem for the evasion of realities. In *Inland Waterways Corp.* v. *Young*, 1940, 309 U.S. 517, 524, the Supreme Court said:

> "The true nature of these modern devices (government corporations) for carrying out governmental

functions is recognized in other legal relations when realities become decisive. Compare *Clallam County* v. *United States*, 263 U.S. 341; *Emergency Fleet Corp.* v. *Western Union*, 275 U.S. 415. *The funds of these corporations are, for all practical purposes, Government funds;* the losses, if losses there be, are Government's losses." (Emphasis supplied.)

Emergency Fleet Corp. v. *Western Union*, 1928, 275 U.S. 415, 422, 423:

"It is argued that the government rate should be denied because the Fleet Corporation is a private corporation. In form, it is such. But all of its $50,000,000 capital stock was subscribed and paid by the Shipping Board on behalf of the United States. All has been so held by it ever since. The United States alone has had a financial interest in its capital stock. The United States alone has contributed the additional money needed from time to time for the conduct of its business."

* * * * * * *

"* * * It obviously was not the intention of the Government in employing a corporate agency to deprive itself of the right of priority of transmission and of the lower rates secured through the Post Roads Act."

In *Cherry Cotton Mills* v. *United States*, 1946, 327 U.S. 536, 539, the Supreme Court held that in a suit against the United States the latter could counterclaim for debts owed a government corporation (Reconstruction Finance Corporation), the corporation being considered the government of the United States within the meaning of the counterclaim statute. In speaking of the Reconstruction Finance Corporation, it stated:

"Its Directors are appointed by the President and confirmed by the Senate; its activities are all aimed

> at accomplishing a public purpose; all of its money comes from the Government; its profits, if any, go to the Government; its losses the Government must bear. That the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is, an agency selected by Government to accomplish purely governmental purposes."

With equal force it can be said here of the Commodity Credit Corporation that "its Directors are appointed by the President and confirmed by the Senate; its activities are all aimed at accomplishing a public purpose; all of its money comes from the Government; its profits, if any, go to the Government; its losses the Government must bear" and "that the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is, an agency selected by the Government to accomplish purely governmental purposes"—that of making loans on agricultural commodities to support the economy of the nation. We do not believe therefore that it requires a forced construction to hold that false claims filed against Commodity Credit Corporation fall within the meaning of the Federal False Claims Act as being claims "upon or against the Government of the United States, or any department or officer thereof". We are not dealing with the criminal aspect of a statute requiring "utmost strictness" in construction. The Circuit Court in the *Marcus* v. *Hess* case, supra, construed this particular statute with "utmost strictness". In reversing, the Supreme Court specifically repudiated that "interpretative approach". We are dealing with a civil statute providing forfeitures for the making of false claims paid by the government. It was the fair intendment of Congress to include claims where the source of payment was the treasury of the United States. As we

have seen, state intermediaries, such as local municipalities and school districts, do not constitute a bar. We cannot see how an intermediary such as a wholly owned governmental corporation could cause such false claims to escape the embrace of the statute.

These cases are reversed and remanded for trial.

A true copy.

Attest:

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Clerk, U. S. Court of Appeals, Eighth Circuit.

(Judgment in Cause No. 15659.)

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 15659 — September Term, 1956.
Friday, May 3, 1957.

United States of America,

Appellant

v.

R. S. Rainwater, Sr., Sloan Rainwater, Jr., William Rainwater, as individuals, and as partners, d/b/a R. S. Rainwater & Sons.

Appeal from the United States District Court for the Eastern District of Arkansas.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Arkansas and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that judgment of the said District Court, in this cause, be, and the same is hereby, reversed.

And it is further Ordered by this Court that this cause, be, and the same is hereby, remanded to the said District Court for trial.

May 3, 1957.

(*Judgment in Cause No.* 15660.)

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 15660 ..... September Term, 1956.
Friday, May 3, 1957.

United States of America,

Appellant,

v.

Citizens National Bank, Walnut Ridge, Arkansas.

Appeal from the United States District Court for the Eastern District of Arkansas.

This cause came on to be heard on the record from the United State District Court for the Eastern District of Arkansas, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed.

And it is further Ordered by this Court that this cause, be, and the same is hereby, remanded to the said District Court for trial.

May 3, 1957.

(Order denying Petition of Appellees for Rehearing in Causes Nos. 15659 and 15660.)

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

September Term, 1956.
Monday, June 17, 1957.

United States of America, Appellant, v. R. S. Rainwater, Sr., et al. No. 15659.	Appeal from the United States District Court for the Eastern District of Arkansas.
United States of America, Appellant, v. Citizens National Bank, Walnut Ridge, Arkansas. No. 15660.	Appeal from the United States District Court for the Eastern District of Arkansas.

Petition for rehearing filed by appellees in these causes having been considered by this Court, It is now here Ordered that the same be, and it is hereby, denied.

June 17, 1957.

(Order Staying Issuance of Mandates in Causes Nos. 15659 and 15660.)

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

September Term, 1956.
Monday, June 17, 1957.

United States of America, Appellant, v. R. S. Rainwater, Sr., et al. No. 15659.	Appeal from the United States District Court for the Eastern District of Arkansas.
United States of America, Appellant, v. Citizens National Bank, Walnut Ridge, Arkansas. No. 15660.	Appeal from the United States District Court for the Eastern District of Arkansas.

On Consideration of request of appellees, contained in petition for rehearing, for stay of the mandates in these causes pending petition to the Supreme Court of the United States for writ of certiorari, It is now here Ordered by this Court that the issuance of the mandates herein be, and the same is hereby, stayed for a period of 30 days from and after this date, and if within said period of 30 days there is filed with the Clerk of this Court certificate of the Clerk of the Supreme Court of the United States that petition for writ of certiorari and record have been filed, the stay hereby granted shall continue until the final disposition of the cases by the Supreme Court.

June 17, 1957.